



U.S. Department of Justice

*United States Attorney  
Eastern District of New York*

WK  
F.#2009R00579

*271 Cadman Plaza East  
Brooklyn, New York 11201*

May 30, 2012

By ECF

The Honorable Sterling Johnson, Jr.  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. John Burke  
Criminal Docket No. 09-135 (S-7) (SJ)

Dear Judge Johnson:

As promised at this morning's charge conference, the government respectfully submits this letter to (1) address the Court's proposed Burden of Proof and Presumption of Innocence instruction and (2) provide a copy of the November 9, 2009 decision, in United States v. Gotti, 08-CR-1220 (S.D.N.Y. 2009), in which the Honorable P. Kevin Castel declined to grant the defendant a surrebuttal at the time of summations.

Burden of Proof and Presumption  
of Innocence Instruction

First, with regard to the Burden of Proof Presumption of Innocence instruction, set forth on page 43 of the Court's proposed jury charge, the government requests that the Court replace the current proposed instruction with the instruction from Sand's Modern Federal Jury Instructions. The Sand charge reads:

The defendant has pleaded not guilty to the charge[s] in the indictment. To convict the defendant, the burden is on the prosecution to prove the defendant's guilt of each element of the charge[s] beyond a reasonable doubt. This burden never shifts to the defendant, for the simple reason that the law presumes a defendant to be innocent and never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

